

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

JAMIE L BANDERAS
Claimant

APPEAL NO. 11A-UI-00334-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAREER OPTIONS INC
Employer

OC: 04/25/10
Claimant: Appellant (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Jamie Banderas, filed an appeal from a decision dated January 5, 2011, reference 03. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on February 14, 2011. The claimant participated on her own behalf. The employer, Career Options, did not provide a telephone number where a witness could be contacted and did not participate.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Jamie Banderas was employed by Career Options from August 31 until December 8, 2010 as a receptionist at Appa Fine Foods. Her duties included answering the phone and doing some production reports.

On November 29, 2010, her supervisor, Martha Gallo, asked her if she would fill in on the production line because it was shorthanded. From that day until December 8, 2010, she worked for several hours per day on the production line. On December 8, 2010, Kristin, from Career Options, met with Ms. Banderas at the client company and said she was being discharged for failure to do her job duties. There had been complaints the phones were not being answered. When the claimant explained Ms. Gallo had asked her to work the production line, Kristin said another supervisor, Sean, had complained that a report was not done corrected. The claimant had explained to Sean, when he gave her the report, she did not know how to do them and he told her to “do her best.”

The claimant was also never notified by Career Options she must contact the temporary agency within a certain number of days to request a new assignment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). In the present case, the employer did not participate to provide any testimony regarding the reasons for the claimant's discharge. It did not rebut any of Ms. Banderas's testimony about being sent to the production line and was therefore unable to answer the phones. As for the report, failure to work to the satisfaction of the employer, without willful failure to work to the best of one's ability, is not misconduct. Disqualification may not be imposed.

DECISION:

The representative's decision of January 5, 2011, reference 01, is reversed. Jamie Banderas is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw